

THE PRESIDENT'S MERCY

BY JAMES HAY, JR.

WILLIAM H. TAFT is known as "the merciful President." He issues more pardons than ever came from any other chief executive of the United States. The weeping women and sorrowing men who have traveled to Washington from all parts of the country to ask his clemency for their imprisoned relatives have found him merciful. And yet his mercy is the most precious, the most carefully guarded, attribute he possesses. It cannot rightly be called an emotion; rather, it is an impersonal thing; for he strives always to keep out of it any hint of emotionalism.

The documents and briefs relating to pardons for federal offenders are the only papers he never takes with him on his railroad trips. Pardons are things that he will not discuss on an automobile ride or during a game of golf. So heavily fraught are they with the possibilities of good and evil, so delicately related are the reasons for and against them, so pregnant are they of woe or happiness, that he takes them into his private office, locks the door, and, safe from either intrusion or interruption, studies them in every phase and to the last iota of evidence. He recognizes no "influence," no "pressure," no "intercession." In the quiet of his room he holds in lone session the High Court of Mercy, that court which listens only to facts.

He did not pardon, only paroled, John R. Walsh, the wealthy Chicago banker, because, in all the efforts made to secure the old man's release, there had been advanced no real reason for the exercise of clemency. Not until Charles W. Morse, the onetime millionaire of New York, was desperately ill did Mr. Taft permit him quarters more comfortable than a cell for the treatment of his health. Here again he showed no mercy, because no fact constituting a reason for leniency had been brought to his notice. And it was only to save Morse from dying a convict that the President finally pardoned him.

If I were a youth, incarcerated because of my first offense, and if I had confessed the consequences of my evil-doing, and if I had been a country boy set down amid the temptations of city life, and thus drawn astray, and if I had a mother dependent upon me for support,—if all those things were true, I might hope for a pardon from William H. Taft. But, even if they were true and there was cause to believe that my release would have a bad effect on the community in which I resided, since it might create the impression that crime was not adequately punished by the law, I should not be pardoned. I make these statements because in the High Court of Justice consideration is given always to the public first, to the offending individual last. At the base of every pardon, conditional or unconditional, issued by the President there must be these two broad facts: the absence of injury to the public, the existence of a real reason for clemency to the individual.

By this formula, Morse and many others have been tried and repudiated by the President.

I WAS moved to write this story because of two things that had come to my knowledge. One was that hundreds of prisoners and their relatives were continually taking the wrong course toward pardons, wasting time and money in attempts that must in the end prove futile. The other was that throughout the country a certain class of lawyers, betraying the nobility of their profession, impoverished the families of convicts by promising pardons that they knew could never be obtained. I had been told of the man who, thinking by day and dreaming by night of the suffering of his children, deeded to an unscrupulous attorney his homestead in the West on the attorney's unqualified assertion that, in return for this fee, the pardon would be forthcoming. I had also learned that this lawyer, pocketing the proceeds of the deed, had done nothing to secure the pardon, and had left the convict to his grief and the children to their destitution. It seemed that few knew how pardons might be secured, the reasons back of their issuance, and the steps necessary to put into motion a request for clemency. Continually, through ignorance, there were the possibilities of the tragedies of men who had ever before their eyes the network of steel bars when, according to justice, they should have been free, workers and producers.

The first discovery was that men and women had been pardoned by President Taft because they were dying of consumption; because the law under which they had been imprisoned had since been declared un-



constitutional; because they had been mutilated or wounded in prison; because their families were ground down by poverty; because delayed evidence had been adduced to throw a new light on their cases; because their sentences had been too severe; and for many other reasons. But hearing on each of these causes had been almost countless other considerations. No pardon case is exactly like any other pardon case. No citizen, no lawyer, can foretell whether a pardon will be granted. Opposed to the compelling reason for clemency in each case are such questions as whether the public will be harmed by the pardon, whether the prisoner will be benefited, and whether the work of the courts should be overthrown.

FIRST of all, any man or woman is offered the benefits of a thorough investigation of his or her case whenever there is any show of probability that a pardon is a possible thing. The employment of a lawyer is not a necessity. Poverty does not make dumb the cry for relief. Attorney General Wickersham, disgusted by the methods of some attorneys in taking money from convicts, has circulated a printed page showing that an application for pardon, signed by the convict and two or more creditable persons and addressed to the President in care of the Attorney General, will set in motion the wheels of the mills of mercy.

These applications, like all others in charge of lawyers or politicians, go first to James A. Finch, the pardon attorney for the Department of Justice, who refers them to the trial judge and the prosecuting attorney who figured in the conviction of the petitioner. If one or the other of these officials reports favorably on the petition, all the evidence in the case, both new and old facts, is sent finally to the President. This man Finch is a marvel in his work. First of all, he is an intensely human man, and, secondly, he is of unusual ability in the judging of evidence. Not only does he collect all the evidence, but he makes a suggestion to the Attorney General as to whether the pardon should be granted. Mr. Wickersham then studies the evidence and thoroughly digests it, deducing his own recommendation, which is sent to the President. Mr. Taft then makes final disposition of the case.

Every pardon case is first handled by Finch, no matter whether a Senator, a Representative, a Judge, or an attorney seeks to have it taken up at the start by the President or Mr. Wickersham. Weeping women have visited Mr. Taft with prayers for clemency for their husbands; but all have received the reply he gives to politicians and attorneys who approach him on the same mission:

"The case will have to be taken up by the pardon attorney. I'm sorry I can't do anything for you now; but I will have to see the evidence. If that warrants clemency, I shall give it."

The wheels of this mill of mercy follow an unfailing orbit. Every plea for pardon goes to Finch, then to Wickersham, then to the President. If a lawyer has charge of the movement for mercy, he collects the papers and does the preliminary work. If a poor convict, unable to employ an attorney, makes the application, Finch does the work.

HERE are the important rules governing the poor man's prayer:

"The petition should state the name of the applicant, his age, where born, previous occupation and place of residence, the crime of which he was convicted, the court, district, State, and term, for how long and to what prison he was sentenced, and the grounds upon which pardon is asked. It is not necessary to furnish a copy of the indictment or other court papers.

"When an application is received it is referred at once, with accompanying papers, to the United States attorney for the district where the trial took place, with direction to submit his report and recommendation thereon, sending the statement of his predecessor when he did not himself appear in the case, and the statement of any special attorney for the Government who took part in the trial. He is also directed to obtain, if possible, the views of the trial judge, and to fill out and return a blank form of docket entries, from which the warrant of pardon may be prepared. Reports are also secured from the warden and the prison physician in regard to the prisoner's conduct and physical condition.

"A case once referred for reports will not be again referred without a written request from the United States attorney or the trial judge; and a case once acted upon

by the President will not be reopened, except upon the presentation of new and material facts.

"When none of the persons consulted advises clemency, the papers are not sent to the President except by his special request, or by special order of the Attorney General; but when anyone of the officers consulted advises clemency the papers are submitted to the President.

"Reports to the President by attorneys, Judges, and other officials on applications for pardon are treated as confidential."

AS has been pointed out, it is impossible for any living soul to predict with certainty whether an application for pardon will be granted or refused. But, in a measure, there is a way for the man who thinks he is unjustly imprisoned to reach a tentative decision as to whether he has a chance for relief. This way is found in the record of the cases acted on favorably by Mr. Taft in the past. If the convict thinks he comes within the conditions there outlined, he does have a chance.

From time to time there have appeared in the newspapers pretty little stories of convicts securing pardons through the intercession of Mrs. Taft. As a matter of fact, many letters asking her good offices go to her; but she hands them over to the President, who refers them to the pardon attorney with the request that the cases to which they refer be investigated. It must be borne in mind always that pardon cases are held by the President to be above the intercession of anyone, and that he has schooled himself to be deaf to all emotional pleas. Any man is naturally sorry for the brother who is imprisoned. Any man's heart is wrung by the spectacle of starving children and a wife bowed down by grief. But in the movement to have the verdicts of juries and the rulings of courts set aside the President holds that the facts alone must be weighed, and in the term "facts" are included extenuating circumstances and reasons—real reasons—for a change of the Government's attitude toward the offender.

THE multitude of events and conditions that can make clemency possible is absolutely bewildering; and yet, in nearly every case, it is easily seen that some little thing might have changed the clemency to immutable refusal to render relief.

In Iowa a man was sentenced to fifty-five years in the penitentiary for embezzling funds and making false entries in the books of a national bank. He applied for clemency. The Department of Justice took it up, found that the man had stolen the money to pay the expenses of a surgical operation on his crippled son, and learned that the people of his town wanted his release and expressed their belief that he would prove a valuable and upright citizen. His sentence was commuted to only three years, with the usual allowances for good conduct. Here was a heartrending story of the father's fierce desire to relieve the sufferings of his son. It was believed that the terrific sentence of fifty-five years at hard labor had been excessive, and it was reasoned that, having worn the uniform of the prison for a little less than three years, the father would go out to his fellows and rebuild, as best he might, his broken reputation.

Lizzie Cardish, an Indian girl of Wisconsin, was first sentenced to imprisonment for life on the charge of arson. Later her punishment was reduced to confinement in a reform school until she reached the age of twenty-one. Kindly men and women heard of her story and told it to the officials in Washington, with a plea for clemency. When a mere child, at the age when girls are still playing with dolls or just beginning to dream of long dresses, she was taken from the tepee of her parents and placed in a school on the Menominee Indian Reservation. There she became dissatisfied and homesick. Was it any wonder that she did? Lonely, miserable, and sullen, she heard the suggestion of one of the older girls that she should burn down the school. She set fire to one of the buildings. It is easy to imagine with what a strong stroke of the pen the President signed the order for her sentence "to expire immediately."

In the books of fate it had been written that Columbia George, a Umatilla Indian, should believe with implicit faith in the superstitions and traditions of his tribe. The Umatillas, on their reservation in Oregon, still thought, even after civilization had surged and settled about them, that any Indian was entitled to kill a "spirit doctor" who failed to cure a patient after promising that the cure would become a certainty. Columbia George took a relative to the "doctor," a woman, who promised him to cure the ailing Indian. But the patient died, and Columbia, stirred to desire for revenge and warranted in his act by the teachings of his tribe, killed the "doctor." In committing the crime, he employed craft, inducing the woman to drink some whisky into which Columbia had put strychnine. He was sentenced to imprisonment for life in the United States penitentiary on Puget Sound, Washington. He began the hopeless round of his days in jail in 1902. On January 31, 1910, the President, believing that it would be unjust to require for such a crime the same penalty as would be visited upon a member of civilized society, commuted the life term to a period of ten years.

Those who read stories of mystery based on the theory of "mistaken identity" often remark: "A clever fancy; but such things never happen in real life." Luigi Zam-